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The Case against Different-Sex Marriage in Kant

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Abstract

Recently, a number of Kantians have argued that despite Kant's own disparaging comments about same-sex intercourse and marriage, his ethical and legal philosophy lacks the resources to show that they are impermissible. I go further by arguing that his framework is in fact more open to same-sex than to different-sex marriage. Central is Kant's claim that marriage requires equality between spouses. Kant himself thought that men and women are not equal, and some of his more insightful remarks on the issue reveal that he was also aware that, as a matter of fact, women were disenfranchised by society, and suffer legal and other forms of discrimination. Kant, according to his own account, cannot approve of heterosexual marriage. Same-sex couples, by contrast, can satisfy the crucial equality condition. I conclude with a suggestion for refocus with respect to the issues at hand, calling for attention to more complex and insidious forms of inequality than deprivation of rights and full civil participation.

Keywords: marriage, sex, equality, gender, natural ends, rights, active and passive citizenship

In this article, I will explore what Kant's views about marriage and gender entail when we think them through more thoroughly than he himself did. I will argue that same-sex marriage is more capable than different-sex marriage of embodying the goals and ideals of marital union as Kant understood the latter.¹

In the first section, I briefly explain why Kant thinks that marriage is morally significant and why it requires equality between spouses. In the second section, I establish that Kant has to allow for same-sex marriage. In the third section, I show how certain unions are incompatible with marriage as Kant understands it, because these unions are not between equals. In the fourth section, I discuss in what sense, according to Kant, men and women are unequal. In the fifth section, I show how, given Kant's own assumptions, men and women can never or hardly ever enter into a marriage contract with each other. At the same time, however, I suggest that we need to pay attention to more complex and insidious forms of inequality than the ones Kant focuses on.

I should note that while this article proceeds via textual exegesis, it goes beyond historical exegesis in two senses. Firstly, I discuss Kant's conception of marriage in the light of a contemporary idea that Kant was unaware of, namely, that marriage can extend to other than heterosexual couples. Secondly, I do not claim that Kant himself believed that same-sex marriage is closer to his ideal of marriage than different-sex marriage is. I only maintain that this follows given Kant's conception of marriage and his views about the differences between men and women – his merely sexist views as well as those that correctly represent *de facto* social and legal gender inequalities. From this I hope that we can gain a better understanding of what Kant's conception of marriage entails, as well as of the notion of equality between partners that is both pivotal for Kant and also central to how we today think of marriage and romantic partnerships.

1. Kant on Marriage

Kant's sexual ethics and conception of marriage is of great significance for the emerging scholarly debate on the history of philosophical reflection on same-sex

marriage, as Kant explains the ethical rationale for marriage ‘without appealing to either religious tradition or legal precedent’ (Altman 2011: 140), and he offers ‘a *secular* argument for an institution of marriage’ (Wilson 2004: 121). However, his discussion of sex and marriage is at times phrased in crude ways. This has led to much ridicule, such as Paul Guyer’s (2006: 276) quip that ‘Kant’s views about sex are, to put it mildly, bizarre, in part at least either the views of a bachelor or the views that made him a bachelor’. Kant does largely abstract from elements that we today think of as important to marriage, such as emotional investment.² His discussion was also unusual in his own time, since his conception of marriage is ‘radically detraditionalized’ (Kuster 2011: 338).³ Kant is interested in the question of why marriage is legally and morally significant, and he believes that neither emotions, nor nature, nor tradition, nor religion (the traditional sources of the value of marriage) can provide an answer. His sterile and technical discussion might seem off-putting at first, but it does express Kant’s earnest attempt to discover what makes this aspect of human community and interaction morally and legally significant. His argument for why there must be marriage draws on many ideas that would require detailed discussion and critical scrutiny. In this section, I will summarize Kant’s view of the matter only insofar as they concern our main goal.

For Kant, the reason why we need marriage at all is that sex is morally problematic. When having sex ‘a human being makes himself into a thing, which conflicts with the right of humanity in his own person’ (6: 278.8-9). When having sex, we use a person as ‘a *consumable* thing’ (6: 360.5) or as an instrument for satisfying desires and obtaining pleasure. Sex for Kant is a form of objectification since it entails that we make use of another for our pleasure and let another make use of ourselves in turn. Kant worries that this violates our and our partner’s humanity.⁴ If we use a person as a

means for sexual gratification, we lack proper regard for her as an end in herself or as something that is not exchangeable and not merely physical, and we lack proper regard for ourselves if we allow others to use us in this way or if we use ourselves in this way (cf. *Groundwork*, 4: 429.10-2).

To better understand the problematic nature of sexual desire, let us briefly look at Seiriol Morgan (2003: sec. 3), who is sympathetic to Kant's analysis. He argues that there are two problems that Kant has with sexual desire. The first is that when having sex a human being surrenders her humanity to her animal instincts and acts like a mere animal or even 'makes himself into a thing' (see above, as well as 6: 425, 27: 385). The second, which Morgan takes to represent a deeper insight into the nature of sexual desire, is that Kant is in general concerned with our tendency to subjugate or dominate others. This tendency is a specifically human one, rooted in our competitive human nature and our unsocial sociability (7: 268.14-274.18; 'Idea for a Universal History', 8: 20.30), which drive us to crave other human beings' esteem as well as to impose our wills upon them (7: 273.16-34). Kant was a pessimist about the general human drive to assert oneself over others. Sexual desire can easily be affected by this tendency, as it is a central element of our self-constitution and sex is a way of interacting that leaves both partners vulnerable to abuse, exploitation and domination. Sex thus can become a field of domination and subjugation, unless proper protections for all involved obtain. Morgan thinks that mutual consent is not sufficient protection in all cases. His account helps us make sense of Kant's negative attitude to sex. The threat of domination and subjugation is a much more immediate moral concern for us today than the supposedly animalistic nature of sexual desires.

Sex for Kant leaves us with the problem of how we can protect ourselves and others from domination or how we can ‘treat each other with the dignity we deserve as rational persons when, in sexual terms, we are out to use each other for the sake of some end, be it our own pleasure or reproduction’ (Altman 2010: 312). It is important to note that finding a way to deal with the moral problem of sex is not optional for Kant. Despite its inherent danger, sex serves the natural end of the perpetuation of the human species.⁵ A human being without sexual impulses would even be ‘an imperfect individual, in that one would believe that he lacked the necessary organs, which would thus be an imperfection on his part, as a human being’ (27: 385.11-13).

Kant believes that only in the context of marriage can two people have intercourse in which neither of the spouses is ‘dehumanized through the bodily use that one makes of the other’ (6: 359.31-2) or without there being the acute danger of one dominating the other. The reason that Kant gives is that in a marriage contract ‘one person is acquired by the other *as if it were a thing*, the one who is acquired acquires the other in turn: for in this way each reclaims itself and restores its personality’ (6: 278.6-22). Whilst this sounds extremely technical, Kant here does in fact outline a conception of marriage based on *equality*.

Three things are important for our purpose here. Firstly, Kant talks about marriage as a form of *acquisition*. This manner of speaking is odd, given that we usually acquire objects, not persons. However, for much of its history marriage was seen as an (economic) transaction where fathers negotiated their daughters’ coming into possession by would-be sons-in-law. Furthermore, in the *Doctrine of Right*, Kant models rightful relationships in general on the paradigm of object possession⁶ and he thinks of marriage as a form of joint possession of material goods as well as of each

other as persons. We will discuss this more extensively in secs. 3 and 5. Secondly, the process Kant describes is *reciprocal*. I give myself to the other and the other gives herself to me and hence we both receive ourselves back.⁷ Thirdly, the process would not be possible, i.e. not result in a rightful marriage, if we could not acquire each other *fully*. If there is something my prospective spouse has or owns that I cannot own, the reciprocal giving would only be partial. My spouse would then acquire me fully but I would not fully acquire my spouse, and this means that I would not receive myself fully back in turn. Reciprocal and full possession of each other requires *equality*. I will argue in sec. 3 that we should understand the equality in question here as equality between *legal persons* meaning that two people share each other's rights. Persons who cannot acquire each other reciprocally and fully are, according to Kant, banned from marrying each other.

If both spouses have acquired each other fully and thus received themselves back fully, marriage secures the spouses' humanity, since it allows 'possession of an external object *as a thing* and use of it *as a person*' (6: 276.19-20, see also 27: 639.12-18), i.e. in marital intercourse safeguards are in place that protect each other, even if spouses engage in activities that make them vulnerable to domination or abuse by each other. A number of recent interpretations help us understand why Kant believes that mere *consent* is not sufficient for this purpose. Lara Denis argues that if sexual unions were without legally enforceable rights of the respective partners against each other, then 'partners would lack the security and the implicit recognition of equality that legal marriage provides' (Denis 2001: 12). Along the same lines, Helga Varden argues that 'there must be a public person with the appropriate standing to adjudicate disputes amongst adults sharing a domestic sphere' (Varden 2007: 206) and for this marriage needs the state to act as a 'civil guardian over domestic

relations, the public adjudicator in conflicts, and as the guarantor of private property rights' (213). I only fully recognize my partner as worthy of respect if I acknowledge the authority of an impartial arbiter who can with external force protect my partner from domination and subjugation.

Kant's idea that *any* kind of intercourse is dangerous or even morally wrong unless the partners are married is admittedly excessively moralistic whether or not marriage is open to same-sex couples.⁸ I will come back to this point towards the end of the article. What we should take away from Kant's conception of marriage so far is that Kant believes that equality between partners is a constitutive feature of marriage. Marriage between unequals would enshrine already existing inequalities into a contract and thus pose a serious peril for the weaker partner to be dominated by their spouse. This contractually sanctioned inequality would make marital intercourse presumably even more dangerous for the weaker party than extramarital intercourse would be.

2. Kant on Same-Sex Marriage

In his *Metaphysics of Morals* as well as in some of the lecture notes Kant articulates a number of moral objections against same-sex intercourse. He dismisses same-sex intercourse as 'unnatural', exhibiting 'unmentionable vices', and he states that 'there are no limitations or exceptions' to this repudiation (6: 277.17-21). He also ranks masturbation, same-sex intercourse and bestiality as more despicable even than suicide (6: 425.6-36, 27: 391.6-392.5, 642.3-15).⁹ Without doubt, Kant still shared many of the traditional views of his time concerning sex, marriage and gender. He once defines marriage as 'the union of two persons *of different sexes* for lifelong possession of each other's sexual attributes' (6: 277.25-6, my emphasis). That

marriage has to be between *different* sexes is, however, a superficial element of his account, as I will argue in this section.

Matthew Altman (2010 and 2011) has recently made a compelling case that given Kant's views on sex and marriage, the Kantian framework allows for and even requires same-sex marriage, 'despite [Kant's] protestations to the contrary' (Altman 2011: 158). I will now briefly rehearse four reasons why on Kant's framework marriage should be open to same-sex couples.¹⁰ I will restrict myself to brief summaries of arguments, since the focus is not to establish that Kant's framework is open to same-sex marriage, but that it might not be to heterosexual marriage

(1) Altman's (2011: 151) most fundamental argument in favour of same-sex marriage in Kant's framework is that 'Kant merely assumes a close link between our natural ends and the categorical imperative without showing how or why contradicting our natural ends would necessarily amount to irrational actions'.¹¹ Kant seems to have admitted natural law theory into his ethics insofar as he concedes that ends that we have by nature are morally significant. He explicitly criticizes such an approach in the *Groundwork* (4: 441.25-445.15). Appeal to natural purposes, such as procreation, alone cannot establish duties, since duty is rooted in formal principles of the will. Kant's moral dismissal of same-sex intercourse is incompatible with a fundamental assumption of his own ethical theory.¹²

(2) Even if we admit the existence of morally significant natural ends, same-sex intercourse would not thwart the natural end of procreation – it simply does not advance it.¹³ It is not clear what Kant regards as the appropriate attitude to the end of procreation. He states that 'one may not, at least, act contrary to that end' (6: 426.3-4). Kant certainly does not think that we have to *maximize* the promotion of this end

or promote it to the detriment of other ends, since we have a number of natural as well as other ends, some of which are even obligatory.¹⁴ He would not see it as morally problematic if, on many occasions, we pursue ends other than procreation. There could be cases in which disregarding a natural end amounts to undermining my agency. In these cases, it might become a moral duty that I pursue this end at least to such an extent that my agency is secured. However, same-sex intercourse does not undermine anyone's agency and is not any more incapacitating than different-sex intercourse (Altman 2010: 324 and 2011: 153).

(3) We consider the maxim to procreate as a 'coordination maxim' (Altman 2011: 153). Not everyone needs to engage in procreation and certainly not all the time. If the population is increasing or remains steady without your contribution, there is no need for you to procreate. Altman's point can be exegetically strengthened by paying close attention to how Kant phrases the natural end of procreation: it is not simply procreation that is a natural end but 'begetting *and bringing up* children' (6: 277.26-7, my emphasis). Bringing up children is a contribution to the survival of the species and something people can do without engaging in any potentially procreative sex. Those who engage in non-procreative sex are still able to do their part to secure species survival, for instance by raising foster children or, more indirectly, by paying taxes which then subsidize public childcare, schools, etc.¹⁵

Kant's negative attitude towards same-sex intercourse is at least partly the result of his conviction that it cannot fulfil the important function of procreation.¹⁶

Nonetheless, as I argued, same-sex couples can perform important functions to further the natural goal of species survival. Furthermore, it is not even '*requisite* for human beings who marry to make [the end of begetting and bringing up children] their end in

order for their union to be compatible with right' (6: 277.29-30). This is so for two reasons. Firstly, if procreation was a prerequisite for marriage, then 'marriage would be dissolved when procreation ceases' (6: 277.30-2), whereas Kant thinks that marriage is a 'lifelong' union (6: 277.25) even if one or both of the spouses become infertile (6: 279.29-35). Secondly, institutions and laws can only police external behaviour, not the adoption of ends (6: 381.30-5). Adopting certain ends can therefore not be required for marriage as we find it discussed in Kant's *political* philosophy.

(4) Kant does not object to different-sex marital intercourse rooted entirely in the desire for pleasure. What matters for Kant is not the naturalness or unnaturalness of the act, nor whether a couple intends to procreate, but whether the partners have bound themselves to each other in a way that ensures mutual respect (Altman 2011: 155; see 6: 277.33-278.4, 426.1-32, 27: 639-40). Once the danger of objectification is dealt with, non-procreative sex is permissible. 'The irony, then, is that it is not the immorality of homosexuality that precludes marriage; rather, not having marriage available to homosexuals makes homosexual unions immoral' (Altman 2011: 161).¹⁷

Kant's teleological assumptions contradict central elements of his ethical theory; and even with these assumptions in place those who do not engage in procreative intercourse can still further the survival of the species. Furthermore, Kant does not object to purely recreational different-sex marital intercourse, and there is no rational grounds on which he could object to recreational same-sex marital intercourse. In fact, his conception of the moral dangers of intercourse, such as instrumentalization and domination, requires that same-sex intercourse take place within marriage.

3. Kant on Marriage between Equals

In the wake of the fourth argument presented in the previous section, Altman (2011: 156) remarks that to answer the question of what forms of sexual relations should enjoy a special legal status ‘Kant focuses entirely on whether the union would be between equals’. This is so because:

Only a contract between equal partners accomplishes the purpose of marriage, because only when two people give possession of themselves completely to one another is sexual objectification overcome through a commitment to the spouse as a person. ... A potential marriage between unequal partners could not fulfill the conditions of a morally appropriate union, so no law could ever validate it.

(Altman 2011: 157)

I believe that Altman is right, but that his defence of same-sex marriage has consequences he himself does not see. In this section, I will show how the notion of equality between sexual partners functions for Kant as a criterion for rightful marriages. In the next section, I will argue that men and women, according to Kant, are rarely if ever equals.

In §26 of the *Metaphysics of Morals*, entitled ‘Marriage Right’, Kant claims that ‘the relation of the partners in a marriage is a relation of *equality* of possession, equality both in their possession of each other as persons ... and also equality in their possession of material goods’ (6: 278.24-9; see also 27: 388.28, 390.20-1).¹⁸ This is a crucial idea for my argument and we need to understand better the notion of equality at play here.

It is relatively uncontroversial what equality of possession of *material goods* means. the respective possessions of both parties become part of one and the same household and hence joint property. The possession or acquisition *of each other as persons*,

however, is more difficult to understand. ‘Person’ for Kant is a moral term. Personality is an agent’s source of moral imputability (6: 26.10-1). It is unclear, however, what ‘possessing someone else’s source of imputability’ could mean. Kant hardly could have thought that I can have someone else’s actions imputed to me. We can rule this meaning of ‘person’ out in the context of Kant’s discussion of marriage. ‘Person’ is also juridical terminology. Kant discusses marriage as a part of the ‘rights to a person akin to rights to a thing’ (*auf dingliche Art persönliches Recht*, 6: 276.17). In the context of marriage, ‘person’ is best understood as referring to the legal status of an agent, or her rights.

We have already seen (sec. 1) that Kant models legal relationships on possession and acquisition. In the context of marriage, we can think of possessing someone as a person as a form of *sharing* in that person’s rights, just as equality of possession means that I can make use of the other person’s property as if it were mine (and in fact it is). Whilst I can of course not possess a right in the same way as I possess an object, I can share my partner’s rights in the sense that I am allowed to do what she does, because I too have these rights. If I have a right my partner cannot share in, I cannot but withhold something from her in the act of mutual giving that is required for marriage to be rightful. The reciprocity of marriage, that I give myself *entirely* to the other and that I receive myself back *entirely* would not obtain, since there would be an insurmountable difference (something I cannot give to my partner) between us.

Notably, the above-quoted passage about equality between spouses is descriptive: it merely states what the relationship is between spouses who enter into a rightful marriage. Kant also intends equality between prospective spouses as a prescription or as a necessary condition for rightful forms of marriage. This becomes clear when he

argues in §26 that *morganatic marriages* (*Ehe von der linken Hand*) do not constitute rightful marriages (6: 279.12-6; see also 27: 642.23-6). Morganatic marriages are between people from different social ranks or classes,¹⁹ specifically between royalty and commoners. The class difference prevents the passage of certain rights, titles and privileges of the one to the other and to any children born of the marriage. The notion of morganatic marriage is strange to us today, since it presupposes a relatively fixed system of classes defined by family lines. Kant's dismissal of the possibility of such marriage expresses the concern that there can be insurmountable power differences between people. Due to these differences one party can only acquire the other party on the cheap, i.e. without transferring all rights to the other party.²⁰ Kant's dismissal of morganatic marriage can be understood as socially conservative and intended to reinforce social boundaries. Alternatively, it can be understood as expressing concern for the role of women within marriage, since morganatic marriages standardly featured the husband in the more powerful position (see 27: 641.3-6).

In any case, Kant's dismissal of morganatic marriage is evidence that he believed equality to be a condition of marriage.²¹ It also shows that we should understand the equal possession of each other as persons as the requirement that couples are able to acquire each other's rights and maybe even certain aspects of their social status insofar as they impact an agent's legal standing.²² The problem with morganatic marriage is that one of the parties is unable to acquire the other's rights in part or in full. My main argument in this article can be put thusly: given Kant's conception of the sexes, different-sex marriage resembles morganatic marriage and should hence be as problematic for Kant. I do put a lot of emphasis on morganatic marriage for my argument, but I think that what Kant says about it is in line with and follows from his

notion of equal possession of each other as persons. We should therefore not consider his remarks *ad hoc*.

It should be noted that morganatic marriage is not merely marriage between persons of different rank, but marriage that *retains* that difference in rank. In rejecting morganatic marriage, Kant was not necessarily arguing that no persons of different rank should marry at all. It might still be possible for two people of different social and legal standing to marry each other if the more privileged partner renounces his privileges. However, there might be privileges that, unlike certain royal titles and claims to inheritance, cannot be renounced voluntarily, such as the right of full citizens to vote or to participate in public affairs (see sec. 4). Even if someone were not to exercise their rights, he would still have them, he could choose to exercise them and they would constitute something their partner, if she lacks these rights, cannot possess.

Directly following his discussion of morganatic marriage, Kant in the same paragraph makes clear that the abstract legal equality that marriage requires need not preclude embodied and lived inequalities within marriage. The husband ‘is to be [the wife’s] master (he is the party to direct, she to obey)’ (6: 279.17-9), and Kant acknowledges a supposed ‘natural superiority of the husband to the wife in his capacity to promote the common interest of the household’ (6: 279.22-3). Within marriage one person has to be subjugated to the other (7: 303.15-7), an arrangement that is supposedly advantageous to both parties (7: 309.29-310.9, 27: :50.12-34). It is significant that these passages speak of inequality *within* marriage and with respect to the capacity to make decisions, not as a prerequisite *for* marriage. Kant here does not talk about legal inequality or inequality preceding marriage. As we saw, he excludes certain couples

from marriage on account of forms of insurmountable legal inequality *prior* to a potential marriage. However, once the marriage contract is established there can be (and maybe must be) inequality between the spouses on account of different cognitive abilities, interests, societal norms, etc.²³

In addition, Kant of course does not require that even prior to marriage spouses share literally everything. There can be inequality between them in terms of intelligence, physical attributes, level of education, and prerogatives acquired as a result of education. A lawyer's spouse may not practice law just because he is married to a lawyer. He can practice law if he successfully passes the bar exam. Prerogatives acquired via special education and training must be excluded from what defines equality between persons for the purpose of marriage.

As we have seen, inequality of a certain kind makes couples ineligible to marry on Kant's conception of a rightful marriage. The case of morganatic marriage also shows that equality of possession cannot just mean that spouses have rights to each other that exclude everyone else, specifically to the exclusive use of their partner's sexual organs.²⁴ Morganatic marriages (as well as incestuous relationships between parents and children) can be monogamous and exclude third parties, yet Kant believes that they do not satisfy the requirements for a rightful marriage. Marriage must do more than just assure the spouses of the exclusivity of intercourse. It must be based on a certain form of equality, namely, equality as persons or legal equality.

As I argued in sec. 1, the requirement that there be equality between spouses is an essential element of Kant's account. Marriage is supposed to function as a safeguard, and it can only do this effectively if I give myself entirely to my partner, my partner does the same, and each of us thus receives ourselves back entirely. If I have a right

that my partner cannot share, the process cannot be fully reciprocal, and my partner is not protected in the same way I am.

4. Kant on the Differences between Men and Women

According to Barbara Herman (1993: 54), Kant might be the modern moral philosopher feminists find most objectionable.²⁵ This is unsurprising as Kant claims that men and women are not even ‘of the same kind’ (‘Observations on The Beautiful and the Sublime’, 2: 228.34) and he calls women a ‘domestic animal’ (*Hausthier*, 7: 304.12). It is, though, difficult to determine how much philosophical weight to place on Kant’s scattered sexist remarks. They mainly provide evidence that he was unable to distance himself from the prejudices of his time. He certainly bought into a highly gendered conception of human beings. Some of his feminist critics even allege that Kant believes that women lack something fundamental for being a full human being, such as rationality or moral agency.²⁶ Different-sex intercourse should then rather be described from a Kantian perspective as a form of bestiality, and thus could not possibly take place within the union of marriage.

However, it is not clear that Kant regards women as lacking rationality or moral agency, and we must now look at his comments about the differences between men and women in detail to understand how fundamental and deeply rooted they are. There are two areas of potential inequality that are relevant for us. The most important is that of (i) *legal* inequality, on which I will draw for my argument in the next section. Here I will also briefly discuss (ii) *moral* inequality, since some interpreters believe that this is the most fundamental form of gender inequality in Kant.

(i) Since Kant discusses marriage primarily as a legal institution, legal inequality is the kind of inequality that is most immediately relevant to the marriage contract.

Women, Kant believes, lack ‘civil personality’ (6: 314.32) or ‘civil independence’ (6: 315.5). This makes them merely passive citizens (6: 314.17-25). Active citizenship means that one can participate in the organization of government affairs, introduce laws and vote on them (6: 315.6-22). Women share the status of being merely passive citizens with many men: apprentices, domestic servants, minors, private tutors, and in general ‘anyone whose preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another (except the state)’ (6: 314.29-31). Kant’s distinction between active and passive citizenship based on whether one is financially dependent on another person is certainly peculiar. What is important for us is that all the examples Kant gives of merely passive citizens are of particular occupations – except in the case of women, where the occupation seems not to matter.²⁷

In the *Anthropology*, Kant calls the state of merely passive citizenship *immaturity* (*Unmündigkeit*): the ‘(natural or legal) incapacity of an otherwise sound human being to use his *own* understanding in civil affairs’ (7: 208.34-5). This state can be based on age or legal arrangements. The latter is called ‘*legal* or *civil* immaturity’ (209.2). Women of all ages are in a state of legal immaturity.²⁸ Husbands are their wives’ ‘natural curator’ (209.5), since women cannot ‘defend their rights and pursue civil affairs for themselves, but only by means of representation’ (209.11-13). Here women are characterized with regard to legal affairs as inferior to men before marriage as well as within marriage. However, immediately after denying women full citizenship in the *Metaphysics of Morals* Kant concedes that: ‘[t]his dependence upon the will of others and this inequality is, however, in no way opposed to their freedom and equality *as human beings*’ (6: 315.6-8). It is unclear whether Kant believes that all passive citizens are equal to active citizens as human beings, or whether some humans

can, so to speak, be more human than others. The latter is strongly suggested when Kant speaks of the ‘natural superiority of the husband to the wife in his capacity to promote the common interest of the household’ (6: 279.22-3). It is important here that this superiority is said to be *natural*, i.e. not merely a result of non-ideal legal arrangements.

There are two very different ways to understand Kant’s claims about legal inequality between men and women. One is that they are intended as descriptions of the social implications of the natural inferiority of women. The other is that Kant here describes inequalities that only exist in non-ideal social settings, and that these inequalities can be overcome through social progress. Kant wavers between the idea that gender inequality is due to women’s natural and necessary inferiority, and the idea that women’s state of immaturity is socially constructed and can and should be exited. In what follows, Kant’s claims about gender inequality lending themselves to the latter interpretation will be of central significance for my argument, as they do not hinge on the sexist assumption that women are naturally inferior.

(ii) The notion that for Kant women do not even count as moral agents and as fully rational is fuelled mainly by his early *Observations on the Feeling of the Beautiful and Sublime* from 1764 and his *Remarks on the Observations on the Feeling of the Beautiful and Sublime* from around the same time. In the former, Kant claims that women will avoid evil not because it is wrong, but because it is ugly: ‘Nothing of ought, nothing of must, nothing of obligation’ (2: 231.32). Women ‘do something only because they love to’ (2: 232.1) not because of moral principles. In the latter, Kant declares that men should not count on a woman’s conception of her duty to ensure her fidelity, but rather keep her loyal through love and honour (20: 77.1-5).

According to these claims, women cannot but act on their inclinations or feelings and they can never act for the sake of morality. If women were truly incapable of acting from duty, they would indeed not be moral agents in Kant's sense, and not possess the same rational capacities as men.

However, whilst Kant greatly deprecates women in his *Observations* and *Reflections*, we must keep in mind that these works are pre-critical. Even without entering the fraught debate about when exactly Kant introduced a conception of action from respect for the moral law into his ethics²⁹, we can say that at the time of the *Observations* and the *Reflections* Kant did not yet envisage a moral agent who can act from reason alone. Kant might simply have thought that both men and women act from different emotions: Men from a sense of honour, women from emotions such as sympathy, jealousy and love. Whilst this is still objectionable, it does not warrant the claim that women are not moral agents for Kant.³⁰ The critical Kant, by contrast, admits that women like to debate the potential moral worth of actions and considers this an expression of their genuine concern for morality (*Critique of Practical Reason*, 5: 153.13-154.16). This is of course still highly belittling and does not show that Kant thinks that women can do more than *talk* about morality. Ultimately, what Kant thinks about the agency of women after he introduced autonomy and respect for the moral law into his philosophy might be unanswerable. In his major critical writings on moral philosophy, he focuses on the source and supreme principle of morality (*Groundwork* and second *Critique*) as well as on the application of this principle to more or less concrete cases (*Metaphysics of Morals*). Many important questions, such as who counts as a moral agent, are left open.

It is not clear that Kant does really think that women lack reason, autonomy or agency and thus, in what follows, I will focus on legal inequality, since it is very clear that Kant assumes that there are significant legal inequalities between men and women.

5. Kant on Different-Sex Marriage

According to Kant, the marriage contract requires equality between partners (sec. 1), and inequality can disqualify certain unions from rightful marriage (sec. 3). Thus given the stark *de facto* legal inequalities between men and women (sec. 4), Kant cannot, according to his own account, approve of different-sex marriage.³¹

In fact, legal inequality is such a big obstacle to different-sex marriage on Kant's account that it is not even clear that women have the legal standing to enter into a marriage contract at all.³² After all, one of the reasons why marriage is good for women, Kant believes, is that women acquire a curator who can take care of their legal affairs for them (see 7: 209.5 and sec. 4 above). Presumably, women do have such a curator prior to marriage as well, normally their fathers. However, Kant never claims that a marriage contract is between a man and *another man* who is the legal curator of the bride. Moreover, there could hardly be anything less indicative of one's respect for one's future wife's humanity than to enter into a contract with a completely different person about the use of her sexual organs. We should therefore assume that, according to Kant, women can enter contracts with men, but that their legal status makes them the decisively weaker party.

Clearly, according to what Kant himself says about men and women, they are not equals in any standard sense of the term. Importantly, they are also not equals according to what Kant *correctly* says about the status of women at the time, namely, that women are *de facto* deprived of full participation in society. Thus we cannot

simply solve the tension between Kant's conception of marriage as between equals and gender inequalities by concluding that he should just drop his sexist prejudices and stereotypes. Clearly, he should. However, as a matter of fact, women at the time lacked important rights and were in a very real sense not equal to men. This matter of fact inequality to which Kant is sensitive is central for my argument. It shows that it is not the case that my argument proceeds via a particularly charitable reading of the implications of his theory for the morality of same-sex intercourse and a much less charitable take on his remarks on women. Some of Kant's remarks pertaining to women's lack of rights and of opportunities to participate in public life reflect inequalities that exist independently of Kant's own sexist attitudes. We can therefore bracket his merely sexist remarks for the purpose of my argument, just as I suggest that we should not rely on Kant's homophobic statements, given that they cannot be sustained in the context of his own theory. I suggest that, across the board, we abandon claims that do not fit with Kant's theory, work out what his theory entails, and then apply the theory to the social reality as Kant correctly captured it in observing that women do not have the same rights as (some) men. This, of course, raises the question of what the upshot of Kant's conception of marriage would be for a society where men and women do enjoy equal rights. I will take up this issue below. We first have to look at legal inequality in more detail.

Due to inequality before the law, women cannot acquire important aspects of full citizens' personhood. The best example of this is the right to vote. If I, as a full citizen, have the right to vote and my partner does not, there is, so to speak, something that I own and that my partner cannot acquire. This is unlike other differences such as that I own a car and my partner does not. The car could simply become our joint property. In the case of rights that my partner cannot share, my

personhood extends to fields that my partner cannot share.³³ No matter in what sense men and women might be equals for Kant, for instance as rational agents, in the sense relevant to his conception of marriage they were not equals in Kant's time.

Admittedly, it might be odd to think of the right to vote as something that can be *owned*, but as I explained earlier, property relations are Kant's model for legally relevant interpersonal relations. In these terms, then, passive citizens can have equal access to active citizen's bodies and property but not to their rights, and both can therefore not fully and reciprocally possess each other as persons. Whilst this is potentially a problem for all couples (different-sex and same-sex), it is easier for same-sex couples to satisfy the equality requirement, since in same-sex unions both partners are 'of the same kind' ('Beautiful and Sublime,' 2: 228.34), to speak with Kant, or more likely to be able to share the same rights. It seems that, according to Kant's conception, all or at least the vast majority of eighteenth-century women were not eligible marriage material for male full citizens, and *vice versa*.

However, this might still leave room for two kinds of different-sex marriage even on Kant's account. Firstly, women who have attained active citizenship, if this is possible, might become spouses of active male citizens and, secondly, passive male citizens might be able to marry passive female citizens. The first possibility hinges on whether women can attain a citizenship status equal to that of male full citizens. Many of the circumstances that, according to Kant, bar women from full civil participation are a product of non-ideal, unenlightened social circumstances. Kant even once claims that 'anyone can work their way up from their passive [civil] condition to an active one' (6: 315.19-22).³⁴ It would then be a direction of progressive transformation of society to liberate women and others who are being denied full participation. The

possibility of different-sex marriage on Kant's framework would then be something to strive towards and the result of an accomplished enlightenment. We should bear in mind, however, that active citizenship might only be one hurdle among others. Even active male and female citizens might be unequal in the sense that, unless gender inequality of all kinds is radically eliminated, active citizenship might be much harder to attain, maintain and exercise for women than for men. This raises the question of how to understand the impact of forms of inequality other than legal inequalities in the sense that certain people are explicitly denied rights.

The second possibility also requires that we think more about the impact of other than strictly legal inequality. Passive male citizens still have the upper hand over passive female citizens in the sense that it is easier for them to ascend to active citizenship. In addition, there might be important gender differences even within the respective classes of citizenship: passive male citizens will be much more likely to have the economic upper hand, they will be more respected by society, their opinions will count for more, etc. Much of this of course also holds for a different-sex union between active citizens.

It seems then that, according to Kant's conception, all or at least the vast majority of eighteenth-century women were not eligible marriage material for men, or at least for male full citizens, and *vice versa*. Has this changed since? Whilst the legal status of women today is very different from the late eighteenth century, there still obviously exist wide-spread economic and other gender-inequalities. These, whilst not a form of legal inequality in the strict sense, stifle women's full participation in civil affairs and the exercise of their maturity.

I cannot here settle the question whether Kant's conception of marriage would still rule out different-sex marriages today, as this would require a more in-depth discussion than can be afforded me. In any case, the decisive issue is whether equality as persons only requires the same legal *rights*, or also the same protection by the legal system and even the same opportunities to exercise legal rights. At Kant's time even the first of these conditions did not obtain, whereas nowadays in many societies it does, but even these societies still often fall short of making legal systems work equally well for all and of affording the same opportunities to exercise rights, as these opportunities are frequently restricted by economic and social factors.

A further question for Kant himself would have been this. Even if different-sex marriage was inconsistent with right at Kant's time, what would have been the alternative? Staying in a sexual state of nature would endanger the survival of the species or at least entail that the species could only be preserved by immoral means, outside of marriage. Alternatively, maybe the institution of marriage itself could have become a mechanism for establishing gender equality? This, however, would not work as long as we hold on to the idea that marriage already requires a form of equality. This is an idea we should hold on to, I believe. The equality requirement is the intuitive and plausible core of Kant's conception of marriage. Different-sex marriage, something that many still see as of significant social importance, cannot be rightful as long as women are not full and equal members of society and it cannot be a relation between a master or curator and an immature or disadvantaged domestic servant. In addition, even if marriage established equality between the spouses, for instance by mandating that women are granted all the rights of their spouses, in the absence of other and more universal tools to establish equality before marriage, this would still leave unmarried women deprived of certain rights.

Here it seems to me that we would simply have to envision the possibility that Kant might have overcome the assumption that a couple is either married and enjoys mutually enforceable rights and protections, or they are not and no (or hardly any) protections obtain. In particular, on such an assumption, it would indeed be a problem if heterosexual intercourse, the main way to procreate, could not take place within the context of a rightful marriage.

The problematic assumption here is that it is *only* marriage as a contractual institution that can render sex morally permissible. Marriage is supposed to create legally enforceable protections of partners against domination. But we now know that marriage is not uniquely suited to achieve this. Civil partnerships also constitute an institutional framework for partnerships, and even ‘mere’ romantic couples have legally enforceable rights against each other, such as against rape, physical abuse, and in some countries even against controlling behaviour.³⁵ With respect to our own day in any case, the question might not be so much whether different-sex couples are now equal enough to marry, but rather whether there now exist ample protections for people to engage in sexual intercourse without endangering their humanity and opening themselves up to domination. Shifting our attention to this question would also address the worry that it still seems illiberal if intercourse is morally permissible only in the context of a marriage, even one founded on equality between the partners.

Conclusion

What can we learn from a philosopher who characterizes marriage as ‘the union of two persons of different sexes for lifelong possession of each other’s sexual attributes’ (6: 277.25-6), and who calls women ‘domestic animals’ (7: 304.12)? Kant has the sensible idea that unequal relationships do not deserve the special status marriage enjoys. However, whether a relationship is one between equals is not

entirely up to the spouses but also determined by external factors. This puts different-sex relationships in a problematic position relative to same-sex relationships, as it is more difficult for the former to realize equality. Same-sex relationships, by contrast, lack gender-specific inequalities (though of course they are still susceptible to other forms of inequality), and hence they might do better in realizing a good that is important for relationships.

I hope to have clarified in this paper what Kant is committed to concerning marriage. It goes without saying that this does not constitute an argument for same-sex marriage or against different-sex marriage that can be applied straightforwardly to contemporary debates. If we want to see whether the argument I have reconstructed from Kant would have implications for current debates, we would have to talk about much more complex and insidious forms of inequality than the ones Kant focuses on.³⁶

Notes

1 Kant's writings are cited by volume: page.line of the Academy edition. Unless otherwise noted, citations from vols. 6, 7 and 27 are from *The Metaphysics of Morals* (MM), *Anthropology* (Anth) and *Lectures on Ethics* (LE) respectively. Here and elsewhere, translations follow the *Cambridge Edition of the Works of Immanuel Kant*, edited by P. Guyer and A. W. Wood (MM tr. Mary J. Gregor in Kant 1996, Anth tr. Robert B. Louden in Kant 2007, LE tr. Peter Heath in Kant 1997), except that those of untranslated passages from Kant as well as from German secondary literature are my own.

2 He does, however, not deny that such investments exist (see 27: 384.17-37, 671.14-23). See also Rinne's (2018: ch.2) distinction between narrow and broad sexual love in Kant. The latter 'combines sexual inclination with moral love in the context

of heterosexual marriage’ (Rinne 2018: 68). Moreover, Beever defends Kant’s legalistic accounts of marriage. He reminds us that it is precisely the legal framework created for the institution of marriage that distinguishes marriage from a ‘mere consensual partnership’ (Beever 2016: 341).

3 The innovative as well as traditional elements of Kant’s conception of marriage are discussed in more detail in Pascoe (2018).

4 See 6: 359.23-360.7, Remarks on the Doctrine of Right 20: 461.27-462.7, Draft for *The Metaphysics of Morals* 23: 358.17-25, 27: 384.3-388.5, 637.27-638.20. Both Herman (1993: 53) and Brake (2005: 61) note the parallels between Kant’s concern and contemporary feminist worries about objectification of women.

5 See *Critique of the Power of Judgement* 5: 425.16-33, 6: 277.14-28, 424.12-23, 426.2-4, 7: 303.3-13, 310.32-4, 27: 639.25-30.

6 See, for instance, Kant’s statement that a right is: ‘an intellectual possession of an object’ (6: 249.25), and the label under which he discusses marriage, namely, as a right ‘to a person akin to rights to a thing’ (6: 276.17); see also 6: 277.2-6. Beever (2016: 340-2) explains that thinking of all enforceable contracts in terms of property relations is a remnant of Roman law. He argues that this does not mean that spouses, children or servants are anyone’s property. Rights to a person akin to rights to a thing are rights for ‘a community of free beings’ (6: 276.22).

7 This figure is already expressed in a lecture note from the 1770s: ‘But if I give my entire person to the other and thereby gain the person of the other instead, so I gain myself in turn and have thereby reoccupied myself; for I have given myself as possession to the other, but I take the other in turn as my possession, so I gain myself in turn, since I gain the person, which I have given myself as possession to’ (see Stark 2004: 244, my translation). Elsewhere, Kant states that marriage requires

‘*wechselseitige Dahingebung seiner Person*’ (6: 359.29-30), i.e. that agents surrender their personality reciprocally and completely to each other. Gregor’s translation of *Dahingebung* (at Kant 1996: 495) as simply ‘giving’ is too weak here. See also 6: 278.10-3, Refl. 7565 and 7600, resp. 19: 456.7-9 and 466.14-28, 27: 388.13-35, 638.27-639.24.

8 For critical discussion of Kant’s conception of sex, sexual desire and marriage see, for instance, Brake (2005: 66, 70-4), Papadaki (2010: 277-83), Beever (2016: 344-7).

9 Varden (2007: 200) rightly points out that the views to which Kant’s theory commits him regarding same-sex marriage ‘are not readily seen because the interpretative tradition has focused too much on Kant’s comments about the immorality of sexual actions’.

10 My arguments will largely follow Altman (2010 and 2011), though the third argument presents an elaboration of his own. See Schaff (2001), Varden (2007), Papadaki (2010) for further arguments for the possibility of same-sex marriage in Kant.

11 To give Kant credit, he admits that ‘it is not so easy to produce a rational proof that unnatural, and even merely unpurposive, use of one’s sexual attributes is inadmissible as being a violation of duty to oneself’ (6: 425.20-3).

12 Questioning Kant’s teleological assumptions is the most common way to counter his moral dismissal of same-sex intercourse. See for instance Schaff (2001). Soble (2003), by contrast, argues that Kant’s arguments against same-sex intercourse do not rest on natural teleology, but on the Formula of Humanity. Denis (1999) argues that it is legitimate for Kant to appeal to natural ends, since furthering these ends expresses care for our animal nature, which is an essential part of our humanity.

Both Sobel and Denis, however, believe that Kant's arguments fail to show that same-sex intercourse is immoral.

13 Even in a situation in which everyone engaged in same-sex intercourse and this endangered the survival of the species, the duty could at most be to *also* engage in potentially procreative intercourse, not to refrain from same-sex intercourse altogether.

14 Denis (1999: 235-8) stresses correctly that for Kant furthering natural ends is, at most, *prima facie* good but cannot be a proper duty.

15 Of course, even individuals identifying as gay or lesbian can reproduce, either via artificial means or through heterosexual intercourse.

16 However, Kant contemplates that sterile married couples may engage in morally permissible sex (6: 426.7-19). Thus his negative attitude toward same-sex intercourse cannot be solely due to considerations pertaining to procreation. It should be noted though that Brecher (2018a) recently argued that, according to Kant, marital intercourse without prospect of procreation should be legal but is still unethical.

17 In the *Collins* lecture notes on ethics, Kant defines *crimen carnis* as sexual intercourse of any kind outside marriage (27: 390.12-4). Some of the activities Kant discusses here seem bad only because he thinks that they cannot take place within marriage.

18 That Kantian marriage is based on equality is also emphasized by Denis (1999: 231), Papadaki (2010: 276) and Beever (2016). Beever notes the progressiveness of Kant's account, as '[p]reviously, the position of the common law was that the husband possessed the wife' (Beever 2016: 353).

19 Kant uses the German word *Stand* (6: 279.13), which more literally means ‘estate’, ‘rank’ or ‘status’ and is different from the chiefly socio-economic category ‘class’.

20 The *Handwörterbuch zur deutschen Rechtsgeschichte* notes that morganatic marriage was considered a legally valid marriage, but that it did not create a legal *union* between the spouses (Erler and Kaufmann 1964ff.: 676). The *Handwörterbuch* also notes that whilst morganatic marriages commonly featured a man from the high nobility and a woman from a less important noble house, the *General State Laws for the Prussian States* from 1794 also made it possible for high state officials and officers to enter into a morganatic marriage with someone of a lower social rank (677). Kant’s critical discussion of morganatic marriage in the *Metaphysics of Morals* published in 1797 is thus in part social commentary on a current issue, as the institution of morganatic marriage had been updated just a few years earlier to fit a society in which civil servants and officers became increasingly powerful and important for the functioning of the state.

21 That a form of equality is a condition for marriages to be rightful also underlies Kant’s denial that incestuous marriages can be rightful (see 27: 389.13-390.8). Kant believes that the relationship between parents and children is characterized by a special form of lifelong, asymmetric respect that children owe parents (27: 390.6-7, see also 6: 449.23-30). Due to this life-long asymmetry parents and children are not eligible to marry each other. This is significant since Kant does not prohibit incest across the board (27: 389.21-35), and even concedes that the first men must have married among their sisters (27: 389). The argument against marriage between parents and children solely draws on the insurmountable inequality between the parties, not on a general moral prohibition against incest.

- 22 It also shows that rightful marriage presupposes more than just ‘equality between husband and wife as *rational agents*’ as Denis (2001: 12) believes. In the case of morganatic marriage (and incest) the partners may well be moral and rational equals, yet the marriage is not rightful.
- 23 In the *Anthropology*, Kant says explicitly that inequality is a prerequisite for the ‘unity and indissolubility of a union’ (7: 303.14), i.e. for a marriage to *last*, not for it to be *entered into*.
- 24 This element of the marriage contract is emphasized by Brecher (2018b: sec.2). Kant himself suggests that possession of an object just means the right to exclude others from use of this object (6: 255.26-9).
- 25 See Sedgwick (1990), Mosser (1999: secs. 3 and 5), Mikkola (2011: 90-1) for an overview of feminist criticisms against Kant.
- 26 See, for instance Okin (1982: 82), Schröder (1997: 296). There are also writers more sympathetic to Kant from a feminist perspective, such as Mosser (1999) and Varden (2017).
- 27 In the *Common Saying* essay from 1793, Kant specifies two requirements for active citizenship: firstly, one has to be one’s own master, meaning own property, and secondly, ‘the *natural* one (of not being a child or a woman)’ (8: 295.14-5, see also Lectures on Anthropology, 25: 1046.33-1047.5). Kleingeld (1993: 166-7) points out that Kant’s reason for insisting that women cannot be active citizens ‘are far from clear: sometimes he gestures at reasons, sometimes he merely states baldly that this is so, but nowhere does he spell out explicitly and consistently exactly why women cannot be active citizens’.

- 28 This is of course also prominently stated in Kant's *What is Enlightenment* essay (8: 35.18-9). Here it is clear that Kant hopes for everyone's exit from the state of self-incurred immaturity.
- 29 The term 'autonomy' appears in Kant's oeuvre for the first time in lecture-notes on ethics immediately preceding publication of the *Groundwork* in 1785 (see 27: 1326.16, 29: 626.4).
- 30 See Mosser (1999: 343-4, 350) for criticism of Kant's feminist critics for not taking the specific status of texts within Kant's oeuvre into account. Mikkola (2011: 92), by contrast, argues that Kant's views in the early *Observations* and the late *Anthropology* are 'sufficiently similar to undermine the suggestion that he substantially altered his views of women over time'.
- 31 In the literature, Papadaki (2010: 285) comes closest to this line of thought. She argues that there 'is not much hope, then, that marriage, given Kant's views on men and women, can be a relationship of true equality and reciprocity in the controlling between the two spouses'. She also notes that it seems 'that gay marriage could have every potential of being the perfect kind of marriage for Kant' (290). Papadaki, however, focuses her criticism of gender-differences on inequality *within* marriage and does not draw the important distinction between inequality before and within marriage. In sec. 3, I argued that we should rather understand Kant's emphasis on equality as a prerequisite *for* marriage, since Kant clearly thinks that there can and should be inequality within marriage (see 6: 279.17-23, 7: 303.15-310.9, 27: 50.12-34 and my sec.3). Furthermore, Papadaki does not distinguish between Kant's merely sexist remarks and those remarks that correctly describe the status of women in a sexist society (see further on in the main text).

32 Brandt (1999: 299) argues with reference to 7: 209 that, according to Kant, women can neither enter into marriage contracts nor be punished for crimes. Regarding marriage he argues that the acquisition of a spouse might happen in the form of intercourse, which is interpreted as a contract (see 6: 280.4-8). This, however, cannot be the case. First of all, sexual intercourse, for Kant, is how a marriage contract is *consummated* not a replacement of the contract (see 6: 279.28-9). Furthermore, even if intercourse with the intention to marry were sufficient, it would have to be the intention of *both* parties. If women are in a state of immaturity, how can their intentions matter legally? If they could not, it would be sufficient for a legally valid marriage that a man have intercourse with a woman with the intention of marrying her. Fortunately, there is no indication that this is how Kant thinks of a marriage contract, nor of contracts in general (see 6: 272.2-29, 276.19-34).

33 This problem is explicitly mentioned by Kant in an unpublished reflection: ‘If the woman does not acquire the man in full, then she does not come back into her own possession ... She can only possess part of herself’ (Refl. 7605, 19: 467.19-23, my translation). Kant here does not seem to have equivalent worries pertaining to men.

34 I have corrected the Gregor translation (at Kant 1996: 459), which translates Kant’s third-person plural as a gendered third person singular (‘anyone can work *his* way up’, my emphasis). In the German, this passage is gender-neutral. See also Mikolla (2011: 92), who argues that women for Kant are not ‘*innately incapable*’ of the same things as men. The point is, however, contentious. Other passages indicate that Kant sees natural conditions at the root of gender-inequality (Reflections on Anthropology 15: 555.23-556.6, 797.21-798.2, Lectures on Anthropology 25: 706.30-707.6, 1191.13-23). Furthermore, Marwah (2012: 560) argues that

‘women’s ‘state of Unmundigkeit [*sic*]’ is a fixed rather than temporary condition’.

See Löchel (2006: 60-1) for a middle-ground position.

35 One might worry here whether these rights can be enforced, as rape, domestic abuse, etc. are notoriously underreported. However, this would also be true of rights violations within marriage. In addition, it seems that up until quite recently unmarried couples to a certain extent even enjoyed more legal protections than married ones, as rape was not illegal within marriage in many countries until the 1980s and 90s.

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